

CONFIDENTIAL

CONFIDENTIAL
FOR COUNSEL ONLY

LOOKING AT IT LEGALLY

OUR FIRM HAS BEEN PRIVILEGED TO REPRESENT SEVERAL OF THE CIGARETTE MANUFACTURERS OVER THE LAST 20-PLUS YEARS. OUR INVOLVEMENT IN THE SMOKING AND HEALTH CONTROVERSY DEVELOPED AS A RESULT OF OUR REPRESENTATION OF ONE OF THE MANUFACTURERS IN ONE OF THE EARLY LAWSUITS CONCERNING SMOKING AND HEALTH. THIS CASE WAS TRIED IN KANSAS CITY, MISSOURI, DURING THE EARLY 1960's. SINCE THEN, OUR FIRM HAS NOT ONLY BEEN ENGAGED IN DEFENDING OTHER SUCH LAWSUITS, BUT WE HAVE ALSO BEEN INVOLVED IN EACH OF THE CONGRESSIONAL HEARINGS CONCERNING SMOKING AND HEALTH BEGINNING IN 1964 AND 1965 AND IN OTHER MATTERS RELATING TO SMOKING AND HEALTH BEFORE VARIOUS FEDERAL AND STATE AGENCIES. IN OUR PREPARATORY WORK FOR THESE HEARINGS AND LAWSUITS, WE HAVE MET WITH SCIENTISTS ON BOTH SIDES OF THE SMOKING AND HEALTH CONTROVERSY. IN ADDITION, OUR FIRM MAINTAINS CONTINUING AWARENESS OF SCIENTIFIC RESEARCH AND PUBLISHED DATA. AS A RESULT, OUR FIRM HAS DEVELOPED A RATHER UNIQUE LEGAL EXPERTISE IN THE AREA OF SMOKING AND HEALTH.

I WILL NOW DISCUSS WITH YOU CERTAIN OF THE LAWSUITS WHICH INVOLVED MATTERS RELATING TO SMOKING AND HEALTH. THEN, AFTER _____ REMARKS, WE WILL BE AVAILABLE FOR QUESTIONS.

IN THE TRADITIONAL SMOKING AND HEALTH CASE, A SMOKER OR HIS REPRESENTATIVE SUED ONE OR MORE CIGARETTE MANUFACTURERS, THE

2025047191

BASIS OF THE CLAIM BEING THAT THE SMOKER HAD RECEIVED SOME INJURY ALLEGEDLY CAUSED BY CIGARETTES HE HAD SMOKED.

THE FIRST SUCH SMOKING AND HEALTH CASE WAS FILED IN 1954, AND SINCE THAT TIME OVER ~~135~~ ^{TWENTY} CASES HAVE BEEN FILED. THERE ARE LESS THAN A ~~FEW~~ STILL PENDING. ALL THE OTHERS HAVE BEEN DISPOSED OF WITHOUT THE PAYMENT OF ANY MONEY BY A DEFENDANT MANUFACTURER. THE CASES TRIED WERE WON BY THE DEFENSE, AND THE OTHERS WERE EITHER DISMISSED BY THE PLAINTIFF OR BY THE COURT.

ONE OF THE INTERESTING ASPECTS OF THIS TYPE OF LITIGATION IS THE FACT THAT WHILE PEOPLE ALL OVER THE WORLD SMOKE CIGARETTES, UNTIL LAST YEAR SMOKING AND HEALTH LITIGATION HAD BEEN LIMITED TO THE UNITED STATES. DURING 1980 A CASE WAS FILED IN BUENOS AIRES, ARGENTINA, IN WHICH THREE MEN ALLEGED INJURIES CAUSED BY CIGARETTES MADE BY THE BAT AND PHILIP MORRIS AFFILIATES IN THAT COUNTRY. PRIOR TO THAT TIME NO SMOKING AND HEALTH PRODUCTS LIABILITY CASES HAD BEEN FILED ANYPLACE IN THE WORLD EXCEPT THE UNITED STATES. WHY HERE AND NOT OTHER COUNTRIES? SEVERAL REASONS -- FIRST, FOR APPROXIMATELY THE PAST 50 YEARS IN THE UNITED STATES THERE HAS BEEN A STEADY TREND IN THE LAW MAKING IT EASIER FOR AN INJURED CONSUMER TO RECOVER FROM A MANUFACTURER FOR INJURIES CAUSED BY PRODUCTS. THAT TREND HAS GREATLY ACCELERATED IN THE PAST 20 YEARS. SECOND, MOST PLAINTIFF PERSONAL INJURY LITIGATION IS TAKEN BY THE ATTORNEY ON WHAT IS CALLED A CONTINGENT FEE

CONTRACT. THE ATTORNEY'S ONLY PAYMENT IS A SPECIFIED PORTION OF ANY RECOVERY FROM THE CASE. THIRD, WHILE A SUCCESSFUL PARTY IN THE UNITED STATES RECOVERS HIS COURT COSTS, THAT DOES NOT INCLUDE ATTORNEYS' FEES. THUS, THE TREND IN THE LAW AND THE FACT THAT LITTLE CASH OUTLAY IS REQUIRED HAS ENCOURAGED CONSUMERS AND ATTORNEYS TO INITIATE SMOKING AND HEALTH CASES. ANY PAYMENT OF MONEY TO PLAINTIFFS EITHER BY WAY OF SETTLEMENTS OR IN PAYMENT OF A JUDGMENT WOULD ONLY SERVE TO ENCOURAGE ADDITIONAL CASES. AS AN EXAMPLE, WHEN OUR FIRM DEFENDED A CASE IN PEORIA, ILLINOIS, OUR LOCAL COUNSEL ADVISED US THAT A NUMBER OF LOCAL ATTORNEYS HAD SMOKING AND HEALTH CASES IN THEIR OFFICES BUT HAD NOT FILED THEM BECAUSE THEY SAW NO CHANCE OF MAKING ANY RECOVERY. ALL CASES HAVE BEEN VIGOROUSLY DEFENDED AND THE RESULTS IN EACH CASE HAVE BEEN ADVERSE TO THE PLAINTIFFS.

A PLAINTIFF'S CLAIM THAT HE SHOULD BE ENTITLED TO RECOVER FROM A MANUFACTURER CAN BE BASED ON A NUMBER OF LEGAL THEORIES. THESE INCLUDE:

(1) NEGLIGENCE: THAT THE MANUFACTURER KNEW OR SHOULD HAVE KNOWN THAT HIS PRODUCT WOULD CAUSE INJURY, AND IF HE HAD ACTED REASONABLY HE WOULD HAVE DONE SOMETHING TO CHANGE THE WAY HE MARKETING HIS PRODUCT. THAT ACTION MIGHT HAVE INVOLVED CHANGING THE PRODUCT IN SOME WAY OR WARNING OF RISKS INVOLVED IN USING IT;

(2) IMPLIED WARRANTY: THAT THE LAW IMPLIES A WARRANTY ON THE PART OF SELLERS OF A PRODUCT THAT THE PRODUCT IS REASONABLY FIT FOR CONSUMPTION;

(3) EXPRESS WARRANTY: THAT THE MANUFACTURER THROUGH ONE OF ITS EMPLOYEES OR REPRESENTATIVES MADE ASSURANCES, IN ADVERTISING OR OTHERWISE, THAT THE PRODUCT COULD BE SAFELY USED; AND

(4) STRICT LIABILITY: THAT THE PRODUCT WAS DEFECTIVE, THAT IS, UNREASONABLY DANGEROUS, TO PERSONS WHO MIGHT CONSUME IT.

THE EARLIER PLAINTIFF'S CASES WERE FOUNDED PRIMARILY ON NEGLIGENCE. TODAY THE MOST IMPORTANT THEORY IS STRICT LIABILITY; HOWEVER, AS I WILL EMPHASIZE LATER, THE EXPRESS WARRANTY THEORY IS VERY DANGEROUS, AND THE INDUSTRY MUST BE VERY CAREFUL TO INSURE THAT ITS REPRESENTATIVES MAKE NO STATEMENTS CONCERNING SMOKING AND HEALTH WHICH CANNOT BE SUPPORTED IN COURT.

THE FIRST, AND IN MY VIEW, ONE OF THE MOST IMPORTANT DEFENSES IS THAT OF CAUSATION. THE PLAINTIFF MUST PROVE TO THE JURY THAT IT IS MORE PROBABLE THAN NOT THAT THE SMOKER'S INJURY WAS CAUSED BY THE CIGARETTES HE SMOKED. MANY ALLEGATIONS AGAINST SMOKING HAVE BEEN MADE BY CERTAIN GOVERNMENTAL BODIES AND BY SOME

MEDICAL GROUPS. HOWEVER, A NUMBER OF HIGHLY QUALIFIED SCIENTISTS AND M.D.'S BELIEVE THAT IT HAS NEVER BEEN PROVEN THAT CIGARETTE SMOKING CAUSES ANY DISEASE. A NUMBER OF THESE EXPERTS HAVE TESTIFIED BEFORE OUR CONGRESS AND IN SMOKING AND HEALTH CASES.

A SECOND FACTOR WHICH HAS BEEN OF VALUE IN THESE CASES IS THE GENERAL KNOWLEDGE OF THE PUBLIC OF THE SMOKING AND HEALTH CONTROVERSY. WHILE THE PROOF MAY REMAIN INCONCLUSIVE, PEOPLE HAVE BEEN SAYING FOR HUNDREDS OF YEARS THAT SMOKING MAY BE HARMFUL. IN RECENT YEARS THIS HAS BEEN REINFORCED BY THE WARNING LABELS THAT HAVE BEEN REQUIRED ON ALL PACKAGES OF CIGARETTES AND APPEAR IN ALL CIGARETTE ADS. UNDER THE LAW AS IT EXISTS IN MOST STATES, IF A PERSON IS AWARE OF THE RISKS INVOLVED IN USING A PRODUCT AND VOLUNTARILY CHOOSES TO ENCOUNTER THEM, HE CANNOT RECOVER IN A LAWSUIT AGAINST A MANUFACTURER.

THERE ARE MANY OTHER ISSUES THAT MAY BE INVOLVED IN A GIVEN CASE, BUT THESE ARE TWO OF THE MOST SIGNIFICANT.

THE SERIOUS SIDE OF THE LITIGATION STORY IS THAT THESE SUITS, WHICH NOW DATE BACK MORE THAN 25 YEARS, COULD HAVE DESTROYED THE INDUSTRY. WHAT DOES THE FUTURE HOLD FOR THIS LITIGATION? FIRST OF ALL, THE TREND IN THIS COUNTRY MAKING IT EASIER FOR AN INJURED CONSUMER TO RECOVER FROM A MANUFACTURER FOR INJURIES CAUSED BY PRODUCTS CONTINUES. THERE HAS BEEN SOME RECENT ACTIVITY INITIATED BY BUSINESSMEN AND THE INSURANCE INDUSTRY AT STATE AND

2025047195

FEDERAL LEVELS WHICH MIGHT INDICATE A REVERSAL OF THAT TREND. HOWEVER, UNLESS LEGISLATIVE ACTION IS TAKEN TO REVERSE THE TREND, I BELIEVE WE WILL CONTINUE TO SEE AN EROSION OF THE DEFENSES WHICH MANUFACTURERS HAVE RELIED UPON IN THE PAST. FURTHER, INDICATIONS ARE THE TREND HAS NOW REACHED EUROPE. IT CAN BE REASONABLY ANTICIPATED THAT IN THE NEXT FEW YEARS THERE WILL BE SIGNIFICANT CHANGES IN THE EUROPEAN LAW OF PRODUCTS LIABILITY, MAKING IT EASIER FOR AN INJURED CONSUMER TO RECOVER FROM A MANUFACTURER. DESPITE THESE CHANGES, HOWEVER, OUR FIRM REMAINS OPTIMISTIC THAT THE PATTERN OF SUCCESS IN DEFENDING SMOKING AND HEALTH LITIGATION WHICH HAS BEEN ESTABLISHED WILL CONTINUE INTO THE FUTURE. BUT COMPLACENCY IS NOT WARRANTED. IN FACT, SOME OF YOU MAY HAVE HEARD THAT A LAWSUIT WAS FILED RECENTLY IN SAN FRANCISCO BY MELVIN BELLI, THE FLAMBUOYANT PLAINTIFF'S ATTORNEY. IT IS A LUNG CANCER CASE THAT NAMES SEVERAL MANUFACTURERS AS DEFENDANTS. ANOTHER SUIT WAS RECENTLY FILED IN NEW ORLEANS AGAINST ONE CIGARETTE MANUFACTURER. IT IS A CASE THAT INVOLVES CLAIMS OF SILICOSIS, LUNG CANCER--CHRONIC LUNG DISEASE. THE CASE WAS BROUGHT BY A PLAINTIFF WHO WAS EMPLOYED AS A SAND BLASTER AND SEVERAL MANUFACTURERS OF PROTECTIVE CLOTHING AND EQUIPMENT ARE ALSO NAMED AS DEFENDANTS. AND WE SHOULDN'T LEAVE THE AREA OF PENDING LITIGATION WITHOUT MENTIONING THE ASBESTOS CASES--THE INDUSTRY HAS BEEN BROUGHT INTO NUMEROUS CASES BY DEFENDANT ASBESTOS COMPANIES. THESE CASES SERVE AS A VIVID REMINDER THAT PRODUCTS LIABILITY LAWSUITS AGAINST THE INDUSTRY ARE NOT A THING OF THE PAST.

2025047196

AS YOU MIGHT EXPECT, WE HAVE ALSO BEEN VERY INTERESTED IN THE LAWSUITS WHICH HAVE BEEN FILED BY NONSMOKERS AGAINST FACILITIES, CITIES AND THE FEDERAL GOVERNMENT. I BELIEVE THAT DAVE CYNAMON WILL REVIEW THESE CASES WITH YOU THIS AFTERNOON.

THE PUBLIC SMOKING ISSUE SEEMS TO BE OMNIPRESENT THESE DAYS AND SOME NONSMOKERS HAVE ATTEMPTED TO EXPRESS THEIR FEELINGS IN MANY FORUMS INCLUDING THE COURTS. UNTIL RECENTLY INDIVIDUAL TOBACCO COMPANIES HAD NOT BEEN SUED EITHER BY NONSMOKERS OR JOINED IN A SUIT BY OTHER DEFENDANTS. THIS IS NO LONGER THE CASE. IN SEPTEMBER, 1980, A SMALL ASBESTOS COMPANY FILED A CROSS-COMPLAINT AGAINST THE TOBACCO COMPANIES, CLAIMING THEY SHOULD ASSUME ALL OR PART OF THE RESPONSIBILITY FOR DAMAGES SOUGHT BY HUNDREDS OF INDIVIDUALS IN 10 ASBESTOS CASES CURRENTLY PENDING IN CALIFORNIA COURTS. INCLUDED IN THAT CROSS-COMPLAINT WAS AN ALLEGATION THAT THE INJURIES OF NONSMOKING ASBESTOS WORKERS WERE DUE TO EXPOSURE TO TOBACCO SMOKE AS A "BYSTANDER." SIMILAR CROSS-COMPLAINTS HAVE ALSO BEEN FILED RECENTLY AGAINST THE TOBACCO COMPANIES IN NEW JERSEY.

WHY ARE LAWSUITS RELEVANT TO YOU IN YOUR CAPACITY? WELL, FIRST, IF YOU ARE WITH A COMPANY, THEY HAVE A POTENTIALLY DAMAGING EFFECT ON YOUR BUSINESS; SECOND, THEY POINT OUT THE NEED FOR ACCURACY IN STATEMENTS YOU MAKE ABOUT THE PRODUCT YOU MANUFACTURE. IT IS EXTREMELY IMPORTANT THAT THE PUBLISHED MATERIAL

YOU ISSUE AND THE ORAL STATEMENTS YOU MAKE TO THE MEDIA ARE ACCURATE AND DO NOT MISREPRESENT THE EVIDENCE.

WITH RESPECT TO THE PUBLIC COMMUNICATIONS, LET ME USE A FEW EXAMPLES. SUPPOSE YOU ARE ASKED A QUESTION ABOUT THE EFFECTS OF ENVIRONMENTAL TOBACCO SMOKE BY A REPORTER. YOU SHOULD NOT SAY THAT THERE IS "NO EVIDENCE" THAT A NONSMOKER IS HARMED BY TOBACCO SMOKE. THIS IS INACCURATE BECAUSE THERE IS EVIDENCE IN THE FORM OF PUBLISHED LITERATURE ON THE EFFECTS OF ~~CARCINOGENIC~~ ~~TOBACCO~~ TOBACCO SMOKE PARTICULARLY ON CERTAIN GROUPS OF PEOPLE IN THE POPULATION. WE FEEL THAT THERE ARE SERIOUS DEFICIENCIES IN THIS RESEARCH AND THE TOBACCO INDUSTRY IS CONSTANTLY THE VICTIM OF UNWARRANTED EXTENSIONS AND MISREPRESENTATIONS. STILL THE FACT REMAINS THAT THERE IS "SOME EVIDENCE" PARTICULARLY WITH RESPECT TO PEOPLE WITH HEART AND LUNG DISEASE, THOSE WITH CERTAIN RESPIRATORY CONDITIONS, AND YOUNG CHILDREN. *And most recently There has been publicity on a Japanese study etc.*

MANY OF YOU ARE ALSO FAMILIAR WITH RECENT STUDIES BY WHITE AND FROEB AND HIRAYAMA. THE WHITE STUDY REPORTED LAST MAY THAT NONSMOKERS CHRONICALLY EXPOSED TO TOBACCO SMOKE IN THE WORKPLACE SUFFER SIGNIFICANT DECREASES IN LUNG FUNCTION. THE RECENT HIRAYAMA STUDY REPORTED THAT JAPANESE WIVES OF HEAVY SMOKING HUSBANDS HAVE AN INCREASED RATE OF LUNG CANCER. OBVIOUSLY, WITH STUDIES SUCH AS THESE IN THE OPEN LITERATURE, ONE CAN HARDLY SAY THAT THERE IS "NO EVIDENCE" THAT TOBACCO SMOKE ADVERSELY AFFECTS THE NONSMOKERS.

2025047198

RETURNING TO OUR ORIGINAL QUESTION, YOU COULD ANSWER THE REPORTER BY MAKING SEVERAL STATEMENTS:

1. IT HAS NOT BEEN SCIENTIFICALLY PROVEN THAT PUBLIC SMOKING IS HARMFUL TO NONSMOKERS.

2. MEDICAL AND SCIENTIFIC EVIDENCE DOES NOT WARRANT A CONCLUSION THAT CIGARETTE SMOKING IN PUBLIC PLACES CAUSES DISEASE IN NONSMOKERS.

I THINK ONE POINT IS PROBABLY OBVIOUS TO YOU. IT IS DIFFICULT TO MAKE A STRONG CATEGORICAL STATEMENT WITH RESPECT TO THE PUBLIC SMOKING ISSUE. THIS IS TRUE DESPITE THE FACT THAT IT HAS NOT EVEN BEEN SCIENTIFICALLY PROVEN THAT NONSMOKERS ARE HARMED BY TOBACCO SMOKE. UNFORTUNATELY, MANY SCIENTISTS AND LAY PEOPLE HAVE BEEN UNABLE OR UNWILLING TO SEPARATE ANNOYANCE AND DISCOMFORT FROM ACTUAL "HEALTH HAZARDS." WE WILL CONTINUE TO WORK WITH THE TOBACCO INSTITUTE, COMPANY PEOPLE AND INDEPENDENT SCIENTISTS ON THE QUESTION OF PUBLIC SMOKING IN AN ATTEMPT TO (1) ACCURATELY APPRAISE THE SCIENTIFIC LITERATURE AND (2) FORMULATE STATEMENTS WHICH ARE BOTH USEFUL AND DEFENSIBLE.

I WILL BE PERFECTLY FRANK WITH YOU AND ADMIT THAT OUR CONSTANT EMPHASIS UPON SAFETY AND ACCURACY IN THE SMOKING AND HEALTH AREA HAS NOT LED TO OUR WINNING ANY "POPULARITY CONTESTS."

IN FACT, THE WORDS "LEGAL CLEARANCE" HAVE A NEGATIVE CONNOTATION TO SOME PEOPLE. YET IT IS NOT OUR INTENTION TO OBSTRUCT THE FLOW OF INFORMATION TO THE PUBLIC. WE BELIEVE, AS I HOPE YOU DO, THAT OUR MUTUAL PURPOSE IS TO MAKE CERTAIN THE PUBLIC IS PROVIDED WITH ACCURATE INFORMATION ABOUT CIGARETTES AND TOBACCO PRODUCTS. PERHAPS BY WORKING TOGETHER ON MATERIALS, WE CAN FIND THAT BLEND OF PUBLIC ACCEPTABILITY ON THE ONE HAND AND SCIENTIFIC ACCURACY ON THE OTHER.

LET'S BRING THIS DISCUSSION INTO SHARPER FOCUS. IT IS QUITE ^{POSSIBLE} ~~THAT~~ THAT NOW OR IN THE FUTURE YOU WILL BE IN A POSITION TO MAKE STATEMENTS WHICH A COURT MIGHT FIND WERE MADE WITH ACTUAL OR APPARENT AUTHORITY TO BIND THE INDUSTRY. ANY STATEMENTS WHICH COULD BE CONSTRUED AS AN ASSURANCE OF SAFETY COULD OVERRIDE A DEFENSE BASED ON THE WARNING WHICH IS NOW ON THE PACKAGE OR THE GENERAL KNOWLEDGE OF THE PUBLIC OF THE SMOKING AND HEALTH CONTROVERSY. THE PHRASING OF ANY STATEMENTS WHICH YOU MIGHT MAKE IN THE SMOKING AND HEALTH AREA IS EXTREMELY IMPORTANT. I THINK ALL OF YOU RECOGNIZE THAT THE INDUSTRY DOES NOT AND COULD NOT TAKE THE POSITION THAT CIGARETTES ARE SAFE. WHILE IT CAN BE SAID THAT IT HAS NOT BEEN PROVEN THAT CIGARETTE SMOKING IS HARMFUL, IT CANNOT BE SAID THAT THERE IS NO EVIDENCE THAT CIGARETTE SMOKING IS HARMFUL. FOR EXAMPLE, CERTAIN ADVERTISING BY THE EGG INDUSTRY WHICH STATED THAT THERE WAS ABSOLUTELY NO SCIENTIFIC EVIDENCE THAT THE EATING OF EGGS IN ANY WAY INCREASES THE RISK OF HEART DISEASE, HAS BEEN DECLARED MISLEADING. HAD THE EGG INDUSTRY STATED THAT IT HAD NOT BEEN PROVEN THAT THE EATING OF EGGS CAUSES HEART

2025047200

DISEASE, THEY MIGHT STILL BE ADVERTISING AND MAKING THIS VALID ARGUMENT.

OUR FIRM HAS CERTAIN CLEARANCE RESPONSIBILITIES FOR THE INDUSTRY WITH REGARD TO STATEMENTS RELATING TO SMOKING AND HEALTH. FROM TIME TO TIME, WE DO DETERMINE, AFTER THE FACT, THAT SOMETHING SHOULD HAVE BEEN PHRASED IN A DIFFERENT WAY. THIS IS UNCOMFORTABLE FOR US, AND POTENTIALLY EMBARRASSING FOR WHOEVER DISTRIBUTED THE UNCLEARED MATERIAL.

WE CERTAINLY ARE NOT INTERESTED IN PUTTING ANYONE IN A POSITION OF BEING SO UNSURE AND UNCERTAIN ABOUT THE DISSEMINATION OF MATERIAL THAT NOTHING GETS DISTRIBUTED. WE SIMPLY NEED TO HAVE THE TYPE BALANCE WHICH EXISTS IN MANY AREAS, AND REQUIRES GOOD JUDGMENT ON THE PART OF ALL INVOLVED. IT IS ABSOLUTELY ESSENTIAL TO THE DEFENSE OF THE SMOKING AND HEALTH LITIGATION THAT NO ASSURANCES OF SAFETY OR EVEN STATEMENTS WHICH COULD BE HELD TO HAVE DILUTED OR DESTROYED THE EFFECTIVENESS OF THE WARNING BE MADE. WE MUST BE ABLE TO BACK UP OUR STATEMENTS CONCERNING THE SMOKING AND HEALTH CONTROVERSY IN COURT.

THIS EMPHASIS ON ACCURACY IS EXTREMELY RELEVANT THESE DAYS BECAUSE THE SMOKING QUESTION HAS CLEARLY BECOME VERY EMOTIONAL. SUPPOSE A LARGE STATE ON THE WEST COAST IS HAVING A STATEWIDE ELECTION ON WHETHER TO BAN SMOKING IN CERTAIN PUBLIC PLACES; IT

IS PROBABLE THAT MISREPRESENTATIONS AND UNPROVEN CLAIMS WILL OCCUR. THESE CAN BE MADE BY ZEALOUS LAY PERSONS AS WELL AS SINCERE SCIENTISTS WHO ACTUALLY KNOW ONLY ONE THING--THEY HATE SMOKING. IT IS IN THESE VOLATILE SITUATIONS THAT YOU MUST BE PARTICULARLY CAREFUL NOT TO RESPOND TO THESE STATEMENTS WITH YOUR OWN INACCURATE AND MISLEADING STATEMENTS.

TO ADD AN ELEMENT OF REALISM TO THIS DISCUSSION--SUIT WAS BROUGHT AGAINST THE INSTITUTE A FEW YEARS AGO ALLEGING THAT IT, TOGETHER WITH SOME OF THE MANUFACTURERS, CONSPIRED TO DILUTE AND OVERRIDE THE CONGRESSIONAL WARNING. THE CASE WAS DISMISSED BY PLAINTIFFS PRIOR TO ANY DETERMINATION OF THE ISSUES, BUT IT IS QUITE POSSIBLE THAT A CASE OF THIS SORT COULD BE BROUGHT AGAIN. IN CONNECTION WITH THE CASE, DEPOSITIONS OF A NUMBER OF THE OFFICERS OF THE INSTITUTE WERE TAKEN. THERE WAS ALSO A REQUEST FOR A TREMENDOUS AMOUNT OF DOCUMENTARY MATERIAL. WHILE THERE IS NO PRECISE RULE THAT CAN BE LAID DOWN, PEOPLE SHOULD BE AWARE THAT THE WORKING PAPERS OF THE INSTITUTE--SO-CALLED BUSINESS RECORDS--CAN BE SUBPOENAED AND EMPLOYEES' DEPOSITIONS CAN BE TAKEN. THIS, OF COURSE, IS TRUE OF THE INDIVIDUAL MANUFACTURERS AS WELL. EVERYONE SHOULD BE ALERT SO AS TO AVOID PREPARING DOCUMENTS OR MAKING STATEMENTS THAT COULD LATER BE USED BY PLAINTIFFS IN SMOKING AND HEALTH LITIGATION. SOME EXAMPLES: WE SHOULD REDUCE THE TAR AND NICOTINE CONTENT OF OUR CIGARETTES BECAUSE THEN LUNG CANCER WILL BE REDUCED. (THAT STATEMENT CONCEDES THAT TAR AND NICOTINE

2025047202

CONTAINED IN CIGARETTES CAUSES LUNG CANCER.) WE SHOULD ENCOURAGE DOCTOR X TO PUBLISH MATERIAL STATING THAT IT IS SAFE TO SMOKE OR URGING PEOPLE TO CONTINUE TO SMOKE. (SUCH A STATEMENT WOULD INDICATE THAT THE INSTITUTE OR THE COMPANIES ARE TRYING TO MANIPULATE MEDICAL OR OTHER LITERATURE IN ORDER TO KEEP PEOPLE SMOKING.) I CANNOT EMPHASIZE TO YOU TOO MUCH THAT WE CANNOT PERMIT OURSELVES THE LUXURY THAT THE ANTISMOKING FORCES HAVE SO FREELY INDULGED IN, THAT IS, GROSSLY AND INACCURATELY OVERSTATING OUR SIDE OF THIS CONTROVERSY.

THE THREE PRIMARY AREAS OF INTEREST TO US ARE ACCURACY, AVOIDANCE OF ADMISSIONS OR CONCESSIONS, AND AVOIDANCE OF EXPRESS WARRANTIES OR ASSURANCES OF SAFETY. I AM SURE THAT AT SOME POINT IN THE FUTURE WHEN YOU ARE ATTEMPTING TO DEFEND YOUR COMPANY OR THE INDUSTRY AS A WHOLE, FROM WHAT YOU PERCEIVE (PROBABLY ACCURATELY) TO BE AN UNFAIR, INACCURATE AND UNWARRANTED ATTACK IN THE SMOKING AND HEALTH AREA, YOU WILL BE SOMEWHAT PERTURBED BY HAVING TO CLEAR YOUR STATEMENTS, AND QUITE POSSIBLY FINDING THAT THEY MUST BE SOMEWHAT "TONED DOWN" BEFORE THEY CAN BE CLEARED. YOU MAY EVEN FIND YOURSELF IN AGREEMENT WITH SHAKESPEARE, WHO SUGGESTED THAT THE FIRST THING WE SHOULD DO IN CREATING A NEW SOCIETY IS TO KILL ALL THE LAWYERS. NOTHING I CAN SAY AT THIS TIME WOULD BE SUFFICIENT TO PREVENT SOME OF THESE FRUSTRATIONS WHICH MAY OCCUR IN THE FUTURE. HOWEVER, I CAN ONLY EMPHASIZE THAT IT IS NOT OUR INTENTION TO OBSTRUCT. IT IS OUR INTENTION TO AVOID STATEMENTS

WHICH COULD BE DISASTEROUS FOR THE INDUSTRY IN DEFENDING ITS
SMOKING AND HEALTH LITIGATION IN THE FUTURE.

2025047204